

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5476 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

=====

1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
ALL INDIA TRADE UNION OF FOOD CORPORATION

Versus

UNION OF INDIA

-----  
Appearance:

MR HJ NANAVATI for Petitioner  
NOTICE NOT RECD BACK for Respondent No. 1  
MR BB NAIK for Respondent No. 2  
MR PM THAKKAR for Respondent No. 3

-----  
CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/1999

ORAL JUDGEMENT

Heard Mr. Nanavaty, the learned advocate for the  
petitioner Union, Mr. Thakkar, the learned Sr. Advocate  
appearing for the Corporation and Mr. B.B.Naik for  
respondents nos. 1 and 2.

By this petition under Article 226/227 of the

Constitution of India, the petitioner corporation has challenged the order passed by the first respondent dated 5th September, 1988 inter alia refusing to make reference for making adjudication to the appropriate authority under the Industrial Disputes Act, 1947. The first respondent, while exercising the powers under section 12 subclause 5 of the ID Act, has come to the conclusion that it has been reported by the FCI HQ that the High Court of Gujarat has upheld the action of the Management in prematurely retiring the workmen. In view of this, the Central Government has decided not to refer the dispute for adjudication. The petitioner union has raised the dispute between the Management of the FCI Adipur and All India Trade Union of FCI with Charter of one demand namely Premature Retirement of Shri Madhu Vallabh Fitter, Chelaram K. Cyclone, Attendant, D.B.Rana, Khalasi. The petitioner union has produced the order passed in a petition being special civil application no. 3999 of 1986 dated 27th March, 1987. In the said order, statement made by the learned advocate for respondent No. 2 in the said matter was recorded. Learned advocate for respondent No.2 therein made statement to the effect that the persons belonging to engineering staff and who are members of the petitioner union are not going to be retired compulsorily at the age of fifty years as apprehended by the petitioner but they will be retired at the age of fifty eight years as per the resolution of the Government and the terms of their service. It was also further stated by Mr. Gandhi on behalf of the respondent in the said petition that there is no single case for premature retirement of any of the members of the petitioner union. Thus, in view of the said statement made by the learned advocate for respondent No.2 in the said petition, said petition was withdrawn by the advocate appearing for the petitioner. Thereafter, notification was produced by the FCI by filing the Miscellaneous Civil Application NO. 173 of 1987 in the said petition. In the said application, this Court has passed an order on 12th November, 1987 that the order passed by this Court will not preclude the FCI from taking action for prematurely retiring the staff concerned provided the facts and circumstances exist at that particular time. If such action is taken, the opponents herein can definitely agitate the right of compulsorily retiring staff concerned on grounds available to them including the grounds raised by them in original petition. With the aforesaid observations, said miscellaneous civil application has been disposed of by this Court on 12th November, 1987.

Thereafter, the union has raised the industrial

dispute on 25th June, 1987 with charter of demand raised by the union. However, the first respondent has decided not to refer the said dispute to the appropriate Forum under the ID Act. The prima facie reason given by the first respondent for not referring the dispute to the appropriate forum is incorrect in view of the decision of this court in the said petition as well as the order passed in Miscellaneous Civil Application No. 173 of 1987.

The respondent No. 1 has also committed an error in coming to the conclusion that the High Court of Gujarat has upheld the action of the management in prematurely retiring the workmen. Basically, this conclusion and the reasons are incorrect and wrong looking to the order passed by this court in earlier two petitions and the said miscellaneous civil application and, therefore, the first respondent has committed basic error while rejecting the demand for reference and has also committed an error in interpreting the orders of this Court passed in the said petitions and the miscellaneous civil application. Therefore, in my view, the first respondent, while passing the order dated 5th September, 1988, has committed an error and the reasons given by him are incorrect and contrary to the record. Therefore, the petition is required to be allowed by setting aside the said order.

In view of the above premises, this petition is allowed. the impugned order dated 5th September, 1988 passed by the first respondent is quashed and set aside. The first respondent is directed to pass the fresh orders in accordance with law after taking into consideration the order passed by this court in the aforesaid special civil application no. 3999 of 1986 as also the miscellaneous civil application no. 173 of 1987 dated 12th November, 1987 and shall also consider the fact that the industrial dispute raised by the petitioner union is not finalized by the order passed by the High Court and, therefore, it requires independent consideration without considering the fact that the action on the part of the management has been upheld by this Court. The first respondent shall pass the fresh appropriate orders as expeditiously as possible preferably within two months from the date of receipt of writ of this order. Rule is made absolute to the above extent with no order as to costs.

8.10.1999. (H.K. Rathod, J.)

Vyas